

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KHALID WISDOM,

Plaintiff,

-against-

THE CITY OF NEW YORK, *et al.*,

Defendants.

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REPORT AND
RECOMMENDATION

14 CV 2878 (MKB)(RML)

LEVY, United States Magistrate Judge:

Defendants The City of New York and Police Officer Christop Santiago (“defendants”) move to dismiss the amended complaint for failure to prosecute and failure to comply with discovery orders. (See Letter of Suvarna Sampale, Esq., dated July 13, 2016.) For the reasons stated below, I respectfully recommend that this action be dismissed for failure to prosecute.

Plaintiff Khalid Wisdom (“plaintiff”) commenced this action pro se on May 5, 2014.¹ (See Complaint, dated Apr. 24, 2014.) On October 16, 2014, attorney Kim Richman filed a notice of appearance as counsel for plaintiff. (Notice of Appearance, dated Oct. 16, 2014.) The parties appeared before me for an initial conference on February 27, 2015, and plaintiff filed an amended complaint on March 30, 2015. (Minute Entry, dated Feb. 27, 2015; Amended Complaint, dated Mar. 30, 2015 (“Am. Compl.”) (adding The City of New York and Police Officers “John/Jane Doe” #1-20 as defendants).) In his amended complaint, plaintiff asserts claims for, inter alia, false arrest, malicious abuse of process, and malicious prosecution,

¹ Plaintiff’s complaint named New York City Police Department 62nd Precinct and Police Officer Christop Santiago as defendants. (Complaint, dated Apr. 24, 2014.) By Memorandum and Order dated May 28, 2014, the Honorable Margo K. Brodie, United States District Judge, dismissed the complaint against New York City Police Department 62nd Precinct. (See Memorandum and Order, dated May 28, 2014.)

stemming from an incident that occurred on or about June 29, 2013. (See Am. Compl.)

Defendants answered the amended complaint on April 13, 2015. (Answer, dated Apr. 13, 2015.)

The parties then appeared before me for status conferences on July 2, 2015 and September 16, 2015.² (Minute Entries, dated July 2, Sept. 16, 2015.) By letter dated November 16, 2015, defendants advised the court that plaintiff's counsel intended to withdraw from the action and requested a stay of discovery to provide plaintiff with time to obtain new counsel. (Letter of Suvarna Sampale, Esq., dated Nov. 16, 2015.) I granted that request and set a deadline for plaintiff's counsel to file his motion to withdraw. (Order, dated Nov. 25, 2015.)

Plaintiff's counsel filed the motion to withdraw on December 4, 2015, and I granted the motion on December 15, 2015. (Motion to Withdraw as Attorney, dated Dec. 4, 2015; Order, dated Dec. 15, 2015.) Plaintiff then failed to appear for a conference on January 6, 2016. (Minute Entry, dated Jan. 6, 2016.) I adjourned the conference to February 8, 2016, and advised plaintiff that new counsel should file a notice of appearance by that date or he should appear and be prepared to proceed pro se. (Id.) A copy of my January 6, 2016 minute entry was mailed to plaintiff.

Prior to the conference scheduled for February 8, 2016, plaintiff contacted my chambers via telephone to inquire about an adjournment. (See Minute Entry, dated Feb. 9, 2016.) He was advised to submit a request in writing, but no request was received and plaintiff did not appear for the February 8, 2016 conference. (Id.) On that date, I set a discovery deadline of May 13, 2016, and scheduled a pretrial conference for the same. (Id.) I further advised plaintiff that "if he wishes to continue this litigation, he must be prepared to proceed with

² Discovery in this action was consolidated with a related case, Wisdom v. The City of New York, et al., No. 14 CV 2877. That action was withdrawn with prejudice pursuant to stipulation.

discovery pro se, unless and until he obtains an attorney.” (Id.) Plaintiff was mailed a copy of my February 8, 2016 minute entry.

By letter dated May 10, 2016, defendants’ counsel advised the court that plaintiff had failed to appear for a deposition that was noticed for April 29, 2016, and plaintiff had informed defendants’ counsel that he would not be available to attend the May 13, 2016 conference. (Letter of Suvarna Sampale, Esq., dated May 10, 2016.) Due to plaintiff’s unavailability, defendants requested a forty-five day extension of time to complete fact discovery and an adjournment of the May 13, 2016 conference. (Id.) I granted that request and adjourned the conference to June 29, 2016. (Order, dated May 12, 2016.)

Defendants subsequently served plaintiff with notice of his deposition scheduled for June 23, 2016. (Letter of Suvarna Sampale, Esq., dated July 13, 2016.) Plaintiff was served both personally and by mail. (Id.) Plaintiff did not appear for the deposition, and he did not contact defendants’ counsel regarding his failure to appear. (Id.) Plaintiff also failed to appear for the June 29, 2016 pretrial conference and did not request an adjournment of the conference. (Minute Entry, dated June 29, 2016.) Accordingly, on that date, I indicated that I would recommend that this action be dismissed for failure to prosecute and directed defendants’ counsel to file a submission in support of dismissal. (Id.; see Letter of Suvarna Sampale, Esq., dated July 13, 2016.) Plaintiff was mailed a copy of my June 29, 2016 minute entry as well as defendants’ counsel’s July 13, 2016 letter motion, but he has not responded.

It appearing that plaintiff has abandoned this case, I respectfully recommend that it be dismissed for lack of prosecution. Objections to this Report and Recommendation must be

filed within fourteen (14) days, with courtesy copies to Judge Brodie and to my chambers, in order to preserve appellate review. See 28 U.S.C. § 636(b)(1).

Respectfully submitted,

/s/
ROBERT M. LEVY
United States Magistrate Judge

Dated: Brooklyn, New York
August 16, 2016